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PUBLIC SERVICE COMMISSIONS.

HON. WILLIAM H. HATTON.

The subject under consideration is so large that it is not possible to do more within the time allowed than to call attention to a few points, and as the purpose of a meeting of this kind is to promote discussion, we will, after making a brief general statement, notwithstanding it presents the subject in a disconnected way, take up for consideration a few of the points relating to the details of public regulation about which students of the problem differ, viz.: Valuation of public utility property, uniform accounting and publicity, franchises, state regulation and home rule, rates and classification, and court review.

One of the chief functions of the State is to provide such public utilities as are necessary for the economic and social welfare of the people.

The State has undertaken to furnish these by authorizing various corporations to engage in public service enterprises. Corporations, having engaged in the work, cannot escape the responsibility attaching thereto. They are under obligations to furnish to all persons, without discrimination, adequate facilities and service at reasonable rates.

The right of the State to control and regulate all corporations of its own creation and to prescribe the conditions under which foreign corporations may operate within the State is original and inherent; but, aside from this right of corporate control is the right of the State to control all persons engaged in a public calling and all

property which has, by reason of its use, become invested with a public interest. This is no new theory or doctrine, but it is nearly as old as the common law. The control of railways, which are but modern highways, is of the highest importance at the present time, is increasing and will continue to increase in relative importance from year to year, due to many different causes, among which are increasing intelligence and wealth, resulting in a higher standard of living, the increasing specialization of labor, which requires increased facilities to bring together the specialist and the raw material at the specially equipped factory.

There has been an enormous relative increase in manufacturing, viz., 1890—value of manufactured products, according to census, was in round numbers about \$9,000,000,000; 1900—about \$13,000,000,000, a gain of about 40 per cent. in ten years, and the percentage of gain since that time is much larger.

The concentration of manufacturing in the large factories tends to increased urban population, all of which increases the relative importance of transportation facilities. The transportation of passengers and freight has increased at a rate far in excess of the increase in population.

From 1895 to 1906 track mileage of railways in the United States increased 24 per cent.; gross earnings, 115; net earnings, 124, while the population increased only about 25 per cent.

It requires careful consideration of social and economic relations in order to appreciate the tremendous influence of public utilities and the power of the utility corporations. The value of every piece of property is affected by transportation facilities and charges. He who controls the highways and transportation facilities controls the

wealth and prosperity. A vast power is in his hands,—a power so great that he who wields it uncontrolled may control the nation.

There has been for some years, as shown by census reports, a very marked relative increase in urban population. This, together with increased intelligence and wealth, increases the demand for all kinds of urban and interurban public utilities. The increasing intelligence and enterprise of the rural population brings the telephone and the telegraph into increased use,—thus the relative importance of all public service utilities increases from year to year with the growth of civilization and the complexity of modern life.

Another matter which may be considered in connection with this subject is the fact that there is an ever-increasing demand for abstract wealth, stocks, bonds, mortgages, etc., a form of wealth which in a measure relieves the owners from the care and responsibility of tangible property, but nevertheless gives them power to exact an income therefrom. A large portion of this abstract wealth is in public utility securities.

The policy pursued in the past has enabled the promoter, the inflationist, and the speculator to water, inflate, and manipulate these securities, and in order to make them marketable, the owners have required the public to pay an excessive amount for service rendered to insure interest and dividends on watered stock, or at least to show prospect of dividends. The demand for abstract wealth has been such as to furnish a market for these securities, but they have been so manipulated that only the wealthy, who can employ experts and attorneys to investigate, have been safe in investing in them. Therefore, the result is that a large proportion of the better class of such securities has passed into the hands of the

excessively wealthy, or the idle rich, to whom such securities are attractive on account of the desire to escape the responsibility of wealth and still enjoy the income therefrom, a system which is comparable to absentee landlordism, and tending to class distinction. This class of property should be so guarded and controlled that the present manifest greed of some of the owners may not wring from the workers an unjust tribute for the benefit of the idlers.

With the proper control and regulation, all of these public utility securities can be made reasonably stable and safe, which will tend toward local ownership of these various utilities by the wage earner and small investor, people who are more directly interested in them,—a condition very much to be desired.

The necessity for efficient public regulation is evident.

The right of the State to control is clear, but, on account of the various and varying conditions under which public service enterprises exist, and are operated, it is not practicable for the legislature, owing to its large membership, its organization and procedure, designed for general legislation, rather than administration, to deal with them except in a general way. Therefore, if we are to have effective public regulation, the legislature must intrust the details to some smaller and differently organized tribunal.

Whenever an attempt has been made to confer this regulating power on the judiciary, the courts have held the act to be unconstitutional, and have declared it to be an exclusive legislative or administrative function which may be exercised through a commission. The courts have defined the law and pointed out a practicable method of exercising the power of the State.

The commissions have been established. They stand on clear legal ground. They occupy a legitimate field.

No person need offer any apology for the existence of a well-ordered commission. The apology is due from those who have neglected to provide some effective method for exercising the State's power to the end that justice may prevail.

The economic and social necessity for such a tribunal is sufficient to justify its existence. The importance of the work intrusted to it is equaled only by that of the judiciary. Not only the financial, but the social well-being of the people is involved in the question of the proper control and regulation of public service corporations.

COMMISSION.

Much depends on the personnel of the commission. So important is the work intrusted to it that it requires men of high character and broad training. It would be folly to allow partisan or personal influences to govern in the selection of the commissioners. They should be, as our judges are, beyond the control of partisans or the influence of petty political strife. Honest, broad-minded men, influenced only by the highest motives, seeking only an equitable adjustment of the relations between the public and the corporations. We must not, however, overlook the fact that weak, inefficient or corrupt men may by chance or design secure a place on the commission. Therefore, the commission should be subject to wise and discreet checks and balances so important in representative government. The law itself must be so sound, having such inherent force and such efficient executive machinery, that the work of the commission, like the work of our government, will go on, and the will of the people

will be carried out even though at times the guiding hands are weak. Otherwise the delegation of authority may be the means of defeating the will of the people rather than enforcing it.

VALUATION.

As a foundation for its work and that the commission may proceed intelligently and within its legal powers, it must know the value of the property of any public utility corporation, the acts of which are under consideration, for the courts have held that, after due consideration is given to the public rights and the value of services rendered, that the corporation is entitled to charge a rate that shall yield returns on a reasonable value of the property devoted to public use. Therefore, it may readily be seen that the commission should be required to ascertain the value, and full authority must be conferred upon it to secure from whatever source obtainable all the necessary information to enable it to arrive at the true value of each public utility plant.

The actual investment, the true physical value ascertained by competent engineers and experts employed by the commission, is the true basis for valuation. It should not, however, be understood that this is the only element to be considered, for the commission should take into consideration every element that in any way affects the value of the property considered as any operating unit, but that the commission, the courts, and the public may be enabled to pass judgment intelligently upon any matter relating to any public utility, it is absolutely necessary that the actual physical value be ascertained and made known.

If it is conceded that the nature of the business of pub-

lic service corporations is monopolistic, and that each corporation is to be protected in its investment by granting it a monopoly in its field, and the opportunity to continue indefinitely, then all of the elements which enter into the valuation of the property of competitive business enterprises, including franchises, goodwill, etc. (which have furnished such fruitful field for the operations of the promoter, the inflationist, and the stock speculator), will be affected and some of these elements will be eliminated.

Too much emphasis cannot be placed upon the matter of valuation, and especially the physical valuation, for it is essential, if we are to protect the public from excessive charges which may be made through the compulsory power of the corporation having a monopoly of the field, also that the utility corporation may be protected in the matter of returns on its investment, to which the courts have held it to be entitled.

Do not misunderstand this statement relating to returns on investment. Many hold to the theory that the corporation is entitled to charge sufficient to pay all operating expenses, interest, and other fixed charges and dividends on stock under all circumstances.

Those who take this view evidently have not fully considered what the courts have said on the subject, for the United States Supreme Court holds that each case must be considered on its merits, and due consideration must be given to the value of the services rendered, and that the rate must be just to both the public and the corporation.

In 169 U. S. 446 the Court said:

“It cannot therefore be admitted that a railroad corporation maintaining a highway under the authority of the state may fix its rates with a view solely to its own interest and ignore the rights of the public.

"But the rights of the public would be ignored if rates for transportation of persons or property on a railroad are exacted without reference to the fair value of the property used for the public or the fair value of the services rendered, but in order simply that the corporation may meet operating expenses, pay the interest on obligations, and declare dividends to stockholders.

"What the company is entitled to ask is a fair return upon the value of that which it employs for public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the service rendered by it is reasonably worth."

PUBLICITY AND UNIFORM ACCOUNTING.

That the commission may have a comprehensive and thorough understanding of the business of the different utility enterprises over which it has jurisdiction, it is necessary that there be adopted by all utility corporations a scientific system of accounting, prepared by experts and approved by the commission, uniform in each class, and all public utility corporations should be required to adopt and use such uniform system and be prohibited from keeping any other books than the regular public books approved by the commission.

The form of accounts is a matter of detail, but two important features should be embodied in any system that is adopted, that is: Accounts should be kept in such a way that the books will show the various items of cost per unit of product. And a depreciation fund account must be kept reasonably adjusted to its earnings and depreciation beyond the amount actually paid for renewals and maintenance be charged off from capital.

The people have a right to know all the facts relating to the finances of any and all public utility enterprises,

and a satisfactory solution of the problem will never be reached until this is conceded and provided for. A complete scientifically arranged, uniform in each class, system of reports prepared under the direction of the commission, showing in detail all financial matters which in any way affect or pertain to investment and operation, should be filed with the commission. The reports of all utility enterprises, whether operated by municipalities or private corporations, should show in detail the various items of cost per unit, such as thousand feet of gas or kilowatt of electricity.

Comparative statistical statements prepared by the commission and published in its annual report will enable the managers, whether under private or public ownership, to make comparisons that will reveal the defects in management. Under this method, each manager is measured by the most efficient as the standard.

Publicity of this kind will enable the public to intelligently pass judgment on the relative economic efficiency of private ownership and management and municipal ownership and management.

When the people have all the facts and know the truth, they will not be unreasonable in their demands.

FRANCHISES.

In order to attract capital and enlist it in public utility enterprises at minimum rates of interest and dividends, it is necessary to offer security and opportunity for permanent investment. Therefore, investments in these enterprises should be made as stable and secure as is consistent with the public interest.

Without effective public regulation, through a competent commission to which the people can appeal for relief from any unreasonable demands of public utility corpora-

tions exercising a monopoly privilege, public authorities, in order to protect the public, deem it necessary to fix a date on which franchises will expire, after which a readjustment of the relations between the public and the utility corporation may be made. The time limit in franchises introduces an unnecessary element of uncertainty into public utility enterprises, which has the effect of increasing the price the patrons are required to pay for service beyond that which can be secured if the time limit is eliminated. There should be granted indeterminate franchises, that is, a franchise which grants the utility corporation the right to continue so long as it shall furnish suitable and adequate facilities and service at reasonable rates in the territory over which its rights extend, or until such time as the municipality shall elect to exercise its option to purchase. Every franchise should reserve an option to the municipality to purchase the utility plant.

Indeterminate franchises will tend to keep the utility corporations out of politics and will go far toward relieving them from corrupt political influences, and will obviate the necessity of a sinking fund to retire existing bonds within the franchise limit, and will prevent returning to the stockholders their capital through the depreciation fund instead of using it as it should be used for maintenance.

It may readily be seen that a limited franchise may afford the utility corporation some ground for the claim frequently made that it has a right to charge sufficient for service to pay dividends and return to bondholders and stockholders the capital invested, while the corporation still owns the utility plant. Under an indeterminate franchise the only legal depreciation charge that can be made is the amount necessary to cover actual depreciation.

It requires very careful adjustment to insure an equit-

able division of the returns from public service enterprises, taking into consideration the stockholders, the employees, and the patrons, that the artisan, the scientist, and the manager may be stimulated to the highest possible efficiency and the goodwill and coöperation of the public secured.

All franchises should provide for some system of profit sharing, examples of which are the "sliding scale", which permits increased dividends when price of product is decreased. Another more equitable plan is to provide for the distribution of any surplus funds on an agreed percentage to stockholders, employees and patrons, or in lieu of specifying any definite plan the franchise may provide that any equitable plan which the commission will approve may be adopted.

With public regulation through a competent tribunal, with power to adjust all disputes and with authority to adjust rates so they shall harmonize with changed conditions, there is no good reason for fixing a time limit in public utility franchises.

STATE REGULATION AND HOME RULE.

While the state has the power to control absolutely all public service corporations, it is well to bear in mind that local municipal government is the true policy to pursue, and wise state supervision, when dealing with public utilities, situated within the corporate limits of cities, will emphasize this principle rather than ignore or override it. The initiative in all local public utility matters should remain with the local authorities. The right to review and regulate should be assumed and exercised by the state.

There is an intermediate field between absolute control and dictation by the state and absolute municipal control

and dictation by the city council. This intermediate field is the proper sphere for the activities of the state commission in regulating the public service utilities situated wholly within the limits of cities. The commission will then occupy the position of a disinterested tribunal rendering expert service, doing that which it is not practicable for the local authorities to do, such as valuation of plant, uniform accounting, reviewing and acting as arbitrator in matter of rates, and in all other disputed matters arising between the municipalities and the public service corporations.

Thus the commission becomes an efficient aid to local control. It enlists active public interest through publicity, thus bringing to bear upon the subject the powerful controlling influence of intelligent public opinion. It renders assistance to local authorities by furnishing reliable data for use in dealing with the utility corporation direct, or in legal contest with it in the courts.

Professor John H. Gray, a recognized authority on such subjects, has said: "We cannot discuss, for want of suitable data, the economic problems connected with gas supply. We lack, completely, data for a discussion of the question now talked about so much, namely, public ownership."

Professor Frank J. Goodnow, of Columbia University, says: "The development of any science of municipal administration is rendered practically impossible because of the absence of all reliable data."

RATE REGULATION.

While there is no way of measuring it, there is no doubt but that the existence of a commission with power to review and fix rates has a very powerful restraining influence on the agents of the utility corporation when making the rates in the first instance.

To secure effective regulation the commission must have power to review on complaint or on its own motion any existing rates, practices or service, and after due notice and hearing, no *ex parte* orders to issue, if the commission finds rates unreasonable, it shall fix reasonable rates which shall be substituted for those found to be unreasonable, and must have like power over practices and service.

The commission shall make definite rates which shall be in force as soon as legally published not maximum rates. Those who question the right of the state to confer on a commission the right to fix definite rates have evidently overlooked the fact that the power of the corporation to fix rates rests solely on the authority conferred upon it by the legislature.

The likelihood of a commission composed of men not only learned in the law relating to utility corporations, but of men who are making a special study of the question, and have no personal interest in the matter at issue, as the men making the rates in the first instance had, fixing an unjust rate is very remote, and as orders of the commission are subject to court review, all interests are amply protected.

CLASSIFICATION.

The importance of freight classification must not be overlooked. The commission must have power to regulate classification, or the rate-making power will not be effective.

HEARINGS AND COURT REVIEW.

At a hearing before the commission both the complainant and the corporation shall be given full opportunity to offer testimony of every kind relating to the matter at issue.

After any such hearing, if the commission shall find the rate complained of to be unreasonable, immediate relief shall be given and the commission shall fix a reasonable rate to be substituted for the rate found to be unreasonable. The new rate must be submitted to and observed until passed on by the courts, and thereafter, unless it shall be declared by the court to be unlawful, as the rate made by the corporation was submitted to and observed until it was declared by the commission to be unreasonable.

It would be an injustice to the complainant, as well as others who are required to pay the unreasonable rate, to allow the matter to be taken to the courts upon appeal to be tried *de novo*, and allow the old rate, which has been declared to be unreasonable, to remain in force pending judicial determination.

To try the case anew in the courts, the old rate remaining in force meanwhile, and keep the complaint entangled in litigation, would not only be unjust to him, but would delay the equitable adjustment of rates by deterring others from making complaint, for the majority will submit to wrongs rather than engage in lengthy litigation with wealthy corporations.

To those who advocate this judicial procedure, we commend the words of Chief Justice Ryan found in his opinion in the Railroad cases. In the 35th Wisconsin he said:

"Their influence is so large, their capacity for resistance so formidable, their powers of oppression so various, that few private persons could litigate with them, still fewer persons would litigate with them for the little rights or the little wrongs which go so far to make up the measure of the average prosperity of life."

The complainant having won his case before the com-

mission, he should be relieved from further litigation and thereafter the state must defend the acts of the commission, for it is a matter of public concern. Therefore, let any party in interest who is dissatisfied with any order of the commission bring an action in any court of competent jurisdiction against the commission as defendant to set aside any order made by it, fixing any rate on the ground that the rate made by the commission is unlawful.

In trials before the courts, if there is offered any new material evidence or any different evidence than that offered at the hearing before the commission, the court shall stay its proceedings for fifteen days and remand the case to the commission for rehearing. This procedure prevents the withholding of material evidence at the hearing before the commission for the purpose of introducing it at the court trial, thereby securing a reversal of the order and thus discrediting the commission, and it compels the submission of all testimony to the commission for consideration before its final action.

At the hearing before the commission the question passed on was the rate made by the utility corporation, and the burden of proof was then upon the complainant, he being the plaintiff, to show by preponderance of evidence that the rate complained of was unreasonable; if he has succeeded in so doing, then in a court trial in an action brought by the utility corporation, the question will be on the rate made by the commission and the burden of proof shall then rest upon the utility corporation, it being the plaintiff, to show by a preponderance of evidence that the rate made by the commission is unlawful.

INTERSTATE COMMERCE.

The Interstate Commerce Commission has jurisdiction over railway corporations with a capitalization of more

than twelve billion dollars, based on various relative values. These corporations operate more than 220,000 miles of railways extending over a vast area of varying topography from rich valleys and fair plains to barren mountains, covering a wide range of climate, industry, and character and density of population. Considering these we can realize the magnitude of the task before it. In order to secure more prompt consideration of interstate transportation questions which arise it may be found necessary and desirable to subdivide the territory creating federal *commerce districts* after the manner of federal judicial districts.